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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO. 03-CA-1430

STEPHEN S. DOBSON, III, P.A.,
a Florida Professional
Association,

Plaintiff,

vs.

LEON COUNTY, FLORIDA, a
political subdivision of
the State of Florida,

Defendant,

DISPOSED

FILED
CIRCUIT CIVIL DIV.
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BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

FINAL JUDGMENT

THIS CASE came on for final hearing this 25th day of July, 2005, in Tallahassee, Leon County, FL. Plaintiff brought this action for indemnification of attorneys' fees and expenses owed by now former Leon County Commissioner Rudy Maloy to Plaintiff in connection with a criminal investigation and subsequent criminal charges lodged against Maloy by the State Attorney for the Second Judicial Circuit in and for Leon County, FL.

Based upon what the parties hereto agreed were undisputed facts, this Court previously ruled on Plaintiff's Motion for Partial Summary Judgment on Liability against Leon County, that Plaintiff was not entitled to recover from Leon County under Count I of its Complaint. Count I was a common law claim based

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ATTORNEY'S OFFICE

on Thornberg v. City of Ft. Walton Beach, 568 So.2d 914 (Fla. 1990). While this Court was of the opinion that a claim was stated and supported by the undisputed facts, this Court ruled that the doctrine of sovereign immunity raised by the County as an affirmative defense barred such common law claim. However, this Court went on to hold that Leon County was liable to Plaintiff under its written policies and such claims were not barred by the doctrine of sovereign immunity. See this Court's Order on Plaintiff's and Leon County's Motions for Partial Summary Judgment dated April 14, 2005.¹ Plaintiff also sought to recover the attorney's fees in the case at bar for having to prove the issue of entitlement to fees and also on the ground that full indemnity for the fees and expenses in the criminal cases under the common law and policies of Leon County would not be achieved if the County forced Plaintiff to incur legal expenses in having to prove entitlement in this case. This Court denies Plaintiff's claim for fees in the case at bar in aforementioned order.

Plaintiff and Leon County have stipulated and agreed that for purposes of this Final Hearing, the Court can rely on

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Plaintiff had also asserted claims against the Florida Association of Counties (FAC) on different theories of liability which were settled by Plaintiff and FAC prior to this hearing. Leon County is entitled to a setoff as hereinafter set forth.

previously filed affidavits of Plaintiff and its expert witnesses and the additional affidavits submitted by both parties and experts for this Final Hearing as well as the depositions, documents, and other evidence previously filed in this case. The sole remaining issue to be determined by this Court is the amount Leon County must pay Plaintiff.

Based on the foregoing, the affidavits submitted by the parties hereto that have been heretofore filed in this case and filed in connection with this final hearing, the record in this case including but not limited to depositions, exhibits, and other documents in evidence in the record, and arguments of counsel for Plaintiff and Leon County, and considering the law of Florida and the Rules of Professional Conduct of The Florida Bar regarding attorneys' fees and otherwise being advised in the premises, the Court hereby finds as follows:

1. The representation of Mr. Maloy required a very high degree of skill, experience, and the commitment of substantial resources. This was not an ordinary, run-of-the-mill case that could be handled in the same manner as the majority of criminal cases. To the contrary, the representation of Mr. Maloy was complicated by numerous factors, including but not limited to the following:

A. The Maloy case was a high profile case that commanded the attention of the local media, resulting in intense press scrutiny of virtually every court proceeding and filing.

B. The Maloy case was a high-stakes representation involving an elected public official, who was suspended from office by the Governor and whose future livelihood was at stake.

C. The State of Florida committed vast resources to the investigation and prosecution of the case. The FDLE investigation involved multiple FDLE investigators who interviewed a substantial number of witnesses and amassed considerable physical evidence. Once the charges were filed, the State Attorney took an aggressive posture concerning the case, refused to permit resolution short of trial, appealed adverse trial court rulings, and essentially adopted a "scorched earth" policy. The State Attorney committed its preeminent white collar crime prosecutor, Neill Wade, to the case, even when the charges were reduced to misdemeanors.

D. The Maloy case involved novel legal issues that required extensive legal research and motion practice. Indeed, the legal issues successfully raised by Plaintiff (the "Dobson Law Firm") ultimately resulted in the charges being

reduced to misdemeanors and otherwise created an atmosphere through which the case could be successfully defended at trial.

E. In order to counter the State's outlay of resources in the prosecution of the case, the Dobson Law Firm was required to make a substantial time commitment to investigating potential prosecution and defense witnesses, identification and analysis of exhibits, and overall trial preparation.

2. In April of 2001, the Dobson Law Firm and Mr. Maloy entered into an oral agreement whereby the Law Firm undertook the representation of Mr. Maloy in connection with the FDLE investigation on an hourly rate basis. After formal charges were filed, the fee agreement was reduced to writing. Under the terms of the written fee agreement, Mr. Maloy deposited a \$50,000.00 non-refundable retainer fee and agreed to pay the Dobson Law Firm according to the following rates:

Stephen S. Dobson, III	\$300/hour
Gary M. Ketchum	\$300/hour
Richard H. Smith	\$225/hour
Paralegal fees	\$ 75/hour

Although Mr. Maloy agreed to pay all fees that exceeded \$50,000.00 upon receipt of a final bill from the Dobson Law Firm, there was no collateral (e.g. a real estate mortgage)

pledged to secure payment of any fees that exceeded the \$50,000.00 initial retainer.

3. This Court has reviewed the billing records of the Dobson Law Firm in evidence. Those records reflect itemized time spent by each member of the firm on Mr. Maloy's representation. The time records are consistent with the fee agreement and indicate the following:

	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Stephen S. Dobson, III	690.10	\$300.00	\$207,030.00
Gary M. Ketchum	342.55	300.00	102,765.00
Richard H. Smith	96.50	225.00	21,712.50
Millicent Lundgren (paralegal)	44.35	75.00	<u>3,326.25</u>

Total Attorney's Fees \$334,836.98

The time records further show costs and expenses of \$4,003.23.

The total amount of attorney's fees and expenses is \$338,836.98.

4. This Court finds that the time spent on the case by the Dobson Law Firm was reasonable. It is apparent that the Dobson Law Firm billed for work on the case that advanced the client's cause. The billing records reflect time that was necessary, productive, and non-duplicative.

5. Under Rule 4-1.5(b), Rules of Professional Conduct, a reasonable attorneys' fee is determined based upon a consideration of the following factors:

A. The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly. This is a major factor in this Court's determination of a reasonable fee. The Maloy criminal cases demanded a great deal of time and careful attention (over 20 months were devoted to defending the investigation, two criminal cases, and an appeal); the issues were novel and difficult; and it was necessary for Mr. Maloy to retain experienced and capable criminal defense lawyers to represent him. Stephen S. Dobson, III, is recognized as one of the premier criminal defense attorneys in this area and he handled the criminal cases in an exemplary fashion. The time spent on the cases was consistent with the circumstances presented and was controlled, in large part, by the actions of the prosecution. The State committed considerable resources and effort to the Maloy cases. The Dobson Law Firm had no choice but to respond with a similar commitment of resources. The time and labor expended by the Dobson Law Firm was consistent with the response required by the State's aggressive pursuit of the cases.

B. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer. This factor is entitled to some weight in this Court of

determination of a reasonable fee. The evidence shows that the Maloy cases were a major undertaking that would preclude acceptance of other clients by the Dobson Law Firm. The Dobson Law Firm was required to make a substantial commitment of time and resources in order to produce the result achieved.

C. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature. In the Tallahassee area, hourly rates for representation in complex litigation cases range upward to \$450/hour for experienced and senior trial counsel and \$275/hour for associates. Many experienced criminal defense attorneys, including Dobson, charge \$300-\$350 per hour for criminal cases.

D. The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained. This factor is entitled to great weight. Although the stakes are high in any criminal case, the particular circumstances of the Maloy cases exacerbated the usual consequences of a criminal conviction. Not only was Mr. Maloy suspended from office by the Governor, if convicted, he stood to lose his pension and other means of livelihood. The results achieved confirm the obvious. This was an extraordinary result accomplished through extraordinary effort.

E. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client. This factor is entitled to some weight. There was an urgency to the defense of the Maloy cases because, until the cases were resolved, Mr. Maloy remained suspended from office. For this reason, there was a need to press forward and the Dobson Law Firm had to place the cases on the "front burner," ahead of other work and cases.

F. The nature and length of the professional relationship with the client. There was no prior attorney-client relationship between Mr. Maloy and the Dobson Law Firm and therefore this factor is not applicable.

G. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services. This factor is entitled to great weight. The Dobson Law Firm did an excellent job of working as a team to insure the right result for the client. Each team member had individual job responsibilities and carried them out in a capable and professional manner.

Stephen S. Dobson, III: Mr. Dobson has approximately fifteen (15) years experience in the defense of criminal cases.

He is a former Florida Department of Law Enforcement Agent and a former federal prosecutor. He has an excellent reputation as one of the top criminal defense lawyers in this area. These cases demonstrate why Mr. Dobson is an outstanding criminal defense attorney. In the hands of a less capable and skilled defense attorney, the cases would have most likely resulted in a conviction of the client. It was only through skillful motion practice and trial strategy that the client prevailed.

Gary Ketchum: Mr. Ketchum is a very experienced litigator. He has worked extensively with Mr. Dobson since 1996 in criminal cases. His role in the Maloy cases was to develop legal theories, perform legal research to support those theories, and to draft motions, arguments, and briefs. The legal issues were novel and complex and Mr. Ketchum's work product placed the Maloy cases in a posture where they could be favorably resolved to the client's benefit.

Richard Smith: Mr. Smith is an experienced criminal trial lawyer in his own right. He is a former assistant state attorney. His role was to assist Mr. Dobson in any capacity needed. He worked directly with Mr. Dobson in formulating defense strategy and in dealing with the day-to-day requirements of managing cases like Maloy faced.

Millicent Lundgren: Ms. Lundgren is an experienced paralegal. She maintained the files and assisted Mr. Dobson at trial. A paralegal's services were required because of the number of witnesses and volume of documents/exhibits.

H. Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation. The law prohibits a contingent fee agreement in a criminal case and therefore this factor is not applicable.

6. Of the twelve counts of alleged criminal wrongdoing by Maloy in the two Informations filed by the State Attorney, either Leon County or FAC, or both, were involved. Sometimes FAC was named as the victim and sometimes Leon County. Of the counts where DOT was named as a victim, either Leon County or FAC was also involved. Count III of the original Information was Official Misconduct and involved Leon County and DOT. Counts I, II and VII involved Leon County and FAC. Counts IV, V and VI involved FAC and DOT. Count VIII of the original Information involved FAC only. This is because all involved alleged duplicate reimbursements or claims therefore, whether a party was named as a "victim" or just a party depended on the choice made by the drafter of the Information in each case. Both parties' involvement was an essential element to be proved

by the State. As to the Amended Information in the second criminal case, it contained only four counts but again, either Leon County or FAC was a "victim" or party in all counts.

This Court noted in its Order of April 14, 2005, (ruling that Leon County was liable to Plaintiff for reimbursement of Maloy's fees and expenses) as a matter of undisputed fact and as a matter of law in this particular case that Maloy's participation in FAC arose out of or was in connection with the performance of his duties as a Leon County Commissioner. Therefore, this Court finds that Leon County is responsible for not only the successful defense of the Counts of the Informations where Leon County was involved as a "victim" or party, the County is also responsible for any counts wherein FAC is a "victim" or party. However, there is also another reason Leon County must reimburse Plaintiff for all of the criminal cases. They are liable to Plaintiff for counts involving just Leon County. The evidence clearly shows and this Court finds that Plaintiff could not have kept time records or otherwise allocated its successful defense efforts by counts or parties involved. The facts were too intertwined. The trial strategies were developed and directed to win the cases as a whole. Both the State and Plaintiff tried the cases in this manner. Plaintiff's expert witness and criminal trial lawyer, Larry

Simpson, Esq., in his testimony, clearly corroborates the testimony of Stephen S. Dobson, III, that it was impossible to keep time records and allocate charges and fees by victim, party or count. Under such circumstances, Leon County is liable for all of the fees and expenses owed to Plaintiff by Maloy. Finding an intertwining of time and effort to defend each of the counts against Mr. Maloy, this Court also finds that the counts related to FAC and DOT were incidental to the counts relating to Leon County. As Such, Leon County is responsible for the totality of fees charged for Mr. Maloy's defense because it would be impossible to allocate the time and effort among each of those claims separately. Each of the claims involved a common core of facts and were based on related legal theories, as such, Mr. Maloy's attorneys could not spend separate and distinct amounts of time defending against any one count.

7. Having considered the factors set forth above and having assigned appropriate weight to each factor, this Court finds the Dobson Law Firm's fees and charges to Maloy to be reasonable. Indeed, one expert testified the value of the services exceeds what the firm billed Maloy. However, the Dobson Law Firm is limited to recovery of attorney's fees from a third party (such as Leon County) to the fee agreement between the firm and the client. As noted above, the fees charged by

the Dobson Law Firm pursuant to the fee agreement amounted to \$334,833.75 plus expenses of \$4,003.23, for a total of \$338,836.98. This Court finds those fees and expenses are reasonable given the circumstances of this particular case.

The Plaintiff also contends that it is entitled to interest on these unpaid amounts from Leon County as follows:

Summary of Prejudgment Interest Calculations as Claimed by Plaintiff

Original Bill for Legal Services Rendered	\$334,833.75
Expenses Incurred	<u>\$ 4,003.23</u>
Total Principle (5/21/03 thru 4/13/05)**	\$338,836.98

On May 20, 2003, the Board of County Commissioners denied payment obligation.

Interest Calculation for 2003 (per annum rate of 6%; daily rate of .0001644)
5/21/03 thru 12/31/03 (225 days)

Per diem rate on principle amount of \$338,836.98 is \$55.704799 for 225 days **\$ 12,533.58**

Interest Calculation for 2004 (per annum rate of 7%; daily rate of .0001918)
1/1/04 thru 12/31/04

Annual rate of 7% on principle amount of \$338,836.98 for one year **\$ 23,718.59**

Interest Calculation for 2005 (per annum rate of 7%; daily rate of .0001918)
Jan 1, 2005, thru April 13, 2005 (103 days)

Per diem rate on principle amount of \$338,836.98 is \$64.988932 for 103 days
\$ 6,393.86

April 14, 2005, thru July 25, 2005 (103 days)

Per diem rate on *adjusted principle amount* of \$238,836.98 for 103 days
is \$45.808932 for 103 days **\$ 4,718.32**

****NOTE: APRIL 13, 2005; RECEIVED \$100,000 FROM FAC
PURSUANT TO SETTLEMENT AGREEMENT AT EXHIBIT "H"
Principle amount *reduced* by \$100,000 **\$238,836.98****

Total interest for 2005 **\$ 11,112.18**

Adjusted Principle as of 04/13/05
Total interest from 05/21/05 thru 07/25/05

\$238,836.98
\$ 47,364.35

Total amount of fees and interest due

\$286,201.33

This Court denies Plaintiff's claim for pre-judgment interest because the amount of fees being sought by Plaintiff in this action were not liquidated. When the amount being sought is not liquidated, the pre-judgment interest is not allowed. Plaintiff contends that just because the County disputed the fees does not preclude prejudgment interest and that Dobson is entitled to interest. That claim is denied.

Therefore, Plaintiff is entitled to receive from Leon County the sum of \$238,836.98 which gives credit for a set-off of \$100,000 received by Plaintiff from FAC on April 13, 2005.

Accordingly, it is

ORDERED and ADJUDGED that Plaintiff is entitled to recover from Leon County and Leon County shall forthwith pay to Plaintiff the sum of \$238,836.98, plus interest hereafter as provided by law, all for which Let Execution Issue.

This Court retains jurisdiction for determination of costs that Plaintiff is entitled to recover in this action and such other relief as may be meet and just, including enforcement of this Final Judgment.

DONE and ORDERED at Tallahassee, Leon County, FL this 11th
day of August, 2005.



MICHAEL D. MILLER
CIRCUIT JUDGE

Copies provided to:

Ben H. Wilkinson, Esq.
D. Andrew Byrne, Esq.

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